

1 Jack Silver, Esq. SB #160575
LAW OFFICE OF JACK SILVER
2 708 Gravenstein Hwy. N., #407
Sebastopol, CA 95472-2808
3 Telephone (707) 528-8175
Email: jsilverenvironmental@gmail.com

4 David J. Weinsoff, Esq. SB #141372
LAW OFFICE OF DAVID J. WEINSOFF
5 138 Ridgeway Avenue
Fairfax, CA 94930
6 Telephone (415) 460-9760
7 Email: david@weinsofflaw.com

8 Attorneys for Plaintiff
CALIFORNIA RIVER WATCH
9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
12

13 CALIFORNIA RIVER WATCH, an
IRC Section 501(c)(3), non-profit,
14 public benefit Corporation,

15 Plaintiff,

16 v.

17 MALIBU BAY CLUB and VENTURA
REGIONAL SANITATION DISTRICT,

18 Defendants.
19 _____/

Case No.: 2:17-cv-05896

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES, AND
DECLARATORY RELIEF**

(Environmental - Clean Water Act
33 U.S.C. § 1251 *et seq.*)

20
21 Plaintiff CALIFORNIA RIVER WATCH (“RIVER WATCH”) hereby brings this
22 civil action pursuant to the Federal Water Pollution Control Act, also known as the Clean
23 Water Act (“CWA”), 33 U.S.C. §§ 1251 *et seq.*

24 **I. INTRODUCTION**

25 1. This action is a citizen suit for injunctive relief, civil penalties, and remediation
26 brought against Defendants MALIBU BAY CLUB and VENTURA REGIONAL
27 SANITATION DISTRICT (collectively hereafter referred to in this Complaint as “the
28 DISCHARGER”) for routinely violating “an effluent standard or limitation Under this

Act”¹ and an order issued by the State with respect to an effluent quality standard or limitation by discharging a pollutant from a point source to a water of the United States without complying with any other sections of the Act including CWA § 402, 33 U.S.C. § 1342².

2. On or about January 13, 2017, RIVER WATCH provided notice of the DISCHARGER’s violations of the CWA to the (1) Administrator of the United States Environmental Protection Agency (“EPA”), (2) EPA's Regional Administrator for Region Nine, (3) Executive Director of the State Water Resources Control Board (“State Board”), (4) Executive Officer of the Los Angeles Regional Water Quality Control Board (“Regional Board”), and (5) the DISCHARGER as required by the CWA 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of RIVER WATCH's 60-Day Notice of Violations (“Notice”) is attached as EXHIBIT A and incorporated by reference. The DISCHARGER, the Regional Board, the State Board, the Regional and National Administrators of EPA all received this Notice.

3. More than sixty days have passed since RIVER WATCH's Notice was served on the DISCHARGER, the Regional Board, the State Board, and the Regional and National EPA Administrators. RIVER WATCH is informed and believes, and thereupon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting a court action to redress the violations alleged in this Complaint. This action’s claim for civil penalties is not barred by any prior administrative penalty under CWA § 309(g), 33 U.S.C. § 1319(g).

II. JURISDICTION and VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.

¹See CWA § 505(a)(1)(A), 33 U.S.C. 1365(a)(1)(A). “[A]ny citizen may commence a civil action on his own behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation under this Act.

²See CWA § 301, (a) 33 U.S.C. § 1311(a). “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.”

1 § 1331 (federal question), and 33 U.S.C. § 1365(a) (CWA citizen suit jurisdiction). The
2 relief requested is authorized pursuant to 28 U.S.C. §§ 2201-2202 (declaratory relief),
3 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. §§ 1319(d), 1365(a)
4 (civil penalties).

5 5. Venue is proper because the DISCHARGER and its discharging collection system,
6 treatment facility and leach lines are located, and the events or omissions giving rise to
7 RIVER WATCH's claims occurred, in this District. 28 U.S.C. § 1391(b)(1), (2). Venue
8 is also proper because the DISCHARGER's CWA violations have occurred and are
9 occurring within the District. 33 U.S.C. § 1365(c)(1).

10 **III. PARTIES**

11 6. RIVER WATCH is an Internal Revenue Code § 501(c)(3) non-profit, public
12 benefit Corporation organized under the laws of the State of California, with
13 headquarters located in Sebastopol, California and mailing address of 290 S. Main Street,
14 #817, Sebastopol, California 95472. The specific purpose of RIVER WATCH is to
15 protect, enhance and help restore surface and ground waters of California including
16 coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated
17 environs, biota, flora and fauna, as well as to educate the public concerning
18 environmental issues associated with these environs. Members of RIVER WATCH have
19 interests in the waters and watersheds which are or may be adversely affected by the
20 DISCHARGER's discharges and violations of the CWA as alleged herein. Said members
21 may use the effected waters and watershed areas for recreation, sports, fishing,
22 swimming, hiking, photography, nature walks and/or the like. Furthermore, the relief
23 sought will redress the injury in fact, likelihood of future injury, and interference with
24 the interests of said members. The DISCHARGER's ongoing violations of the CWA
25 will cause irreparable harm to members of RIVER WATCH for which they have no
26 plain, speedy, or adequate remedy. The relief requested will redress the ongoing injury
27 in fact to RIVER WATCH's members.

1 7. RIVER WATCH is informed and believes, and on such information and belief
2 alleges, that defendant MALIBU BAY CLUB is now, and at all times relevant to this
3 Complaint was, a corporation, registered with the State of California and doing business
4 within the State of California with a business address of 15315 Magnolia Boulevard,
5 #212, Sherman Oaks, CA 91403.

6 8. RIVER WATCH is informed and believes, and on such information and belief
7 alleges, that defendant VENTURA REGIONAL SANITATION DISTRICT is now, and
8 at all times relevant to this Complaint was, a public waste management agency
9 organized pursuant to the County Sanitation District Act of the California Health &
10 Safety Code, Section 4700, with administrative offices located at 1001 Partridge Drive,
11 Suite 150, Ventura, CA 93003-0704.

12 **IV. FACTUAL ALLEGATIONS WHICH GIVE RISE TO CLAIMS**

13 9. RIVER WATCH incorporates by reference all the foregoing including EXHIBIT
14 A as though the same were separately set forth herein. RIVER WATCH takes this action
15 to ensure compliance with the CWA, which regulates the discharge of pollutants into
16 navigable waters. The statute is structured in such a way that all discharges of pollutants
17 are prohibited with the exception of enumerated statutory provisions. One such exception
18 authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C.
19 § 1342, to discharge designated pollutants at certain levels subject to certain conditions.
20 The effluent discharge standards or limitations specified in a National Pollutant
21 Discharge Elimination System (“NPDES”) permit define the scope of the authorized
22 exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of
23 a permit limit places a discharger in violation of the CWA.

24 10. The CWA provides that authority to administer the NPDES permitting system in
25 any given state or region can be delegated by the EPA to a state or to a regional
26 regulatory agency, provided that the applicable state or regional regulatory scheme under
27 which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C.
28 § 1342(b)). In California, the EPA has granted authorization to a state regulatory

1 apparatus comprised of the State Water Resources Control Board and several subsidiary
2 regional water quality control boards to issue NPDES permits. The entity responsible
3 for issuing NPDES permits and otherwise regulating the DISCHARGER's operations
4 in the region at issue in this Complaint is the Regional Water Quality Control Board, Los
5 Angeles Region ("RWQCB").

6 11. While delegating authority to administer the NPDES permitting system, the CWA
7 provides that enforcement of permitting requirements under the statute relating to
8 effluent standards or limitations imposed by the Regional Boards can be ensured by
9 private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33
10 U.S.C. § 1365). RIVER WATCH is exercising such citizen enforcement to enforce
11 compliance by the DISCHARGER with the CWA.

12 12. RIVER WATCH has identified discharges of sewage from the DISCHARGER's
13 sewage collection system, its treatment facility and leach lines to waters of the United
14 States in violation of CWA § 301(a), 33 U.S.C. 1311(a), which states in relevant part,
15 "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404
16 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any
17 pollutant by any person shall be unlawful."

18 13. The DISCHARGER owns and/or operates a sewage collection, treatment and
19 disposal system. The illicit discharges come from several sources including residential
20 septic systems, the collection system, leachline and leachfield disposal system. Each
21 point source is adjacent to the Pacific Ocean. The leachline/leachfield disposal system
22 discharges in close proximity (approximately 30 feet) to the Pacific Ocean and is
23 hydrologically connected, such that a discharge to the leachline/leachfield disposal
24 system often results in a discharge to the Pacific Ocean. The DISCHARGER has no
25 NPDES permit allowing it to lawfully discharge pollutants to jurisdictional waters.

26 14. Defendant VENTURA REGIONAL SANITATION DISTRICT owns and operates
27 the Malibu Bay Club Wastewater Treatment Plant (Malibu Bay Club WWTP) located at
28 41000 Pacific Coast Highway, in Ventura County, California. The Malibu Bay Club

1 WWTP was originally constructed in 2005, and serves the Malibu Bay condominium
2 residence complex.

3 15. On September 16, 2003, VENTURA REGIONAL SANITATION DISTRICT
4 entered into an agreement with MALIBU BAY CLUB to design, build, own, maintain,
5 and operate an advanced onsite wastewater treatment system, which included any related
6 effluent disposal facilities on the Malibu Bay condominium property to treat all
7 wastewater effluent generated from the newly constructed wastewater treatment plant.

8 16. VENTURA REGIONAL SANITATION DISTRICT completed construction of
9 the Malibu Bay Club WWTP on October 18, 2005. The DISCHARGER discharges on
10 an average 15,000 gallons per day (“gpd”) of tertiary treated domestic wastewater. The
11 Malibu Bay Club WWTP has a design treatment and disposal capacity of 36,000 gpd.
12 The Malibu Bay Club WWTP and leach fields are located in and around Section 6, T1S,
13 R16W, San Bernardino Base & Meridian. The primary, secondary and tertiary treatment
14 consists of a collection system, a primary settling/septage handling, a 9,000-gallons
15 equalization tank, a trickling filter, a clean stream treatment, a disinfection system and
16 leachfield disposal system.

17 17. Waste flow from the Malibu Bay Club WWTP is collected through underground
18 piping utilizing gravity flow. The raw wastewater flows by gravity at a minimum scour
19 velocity of 2 feet per second from the source to a primary settling/septic tank.

20 18. The treated effluent is discharged to the groundwater and Pacific Ocean through
21 the leachfield disposal system. The leachfield disposal system consists of three (3)
22 leachfields: the primary leachfield, an alternate leachfield and the backup leachfield. The
23 leachfield disposal system consists of five (5) 75 feet long by 10 feet wide and 5 feet
24 deep cells.

25 19. The Malibu Bay Club WWTP and leachfields are located in the Little Sycamore
26 Canyon Creek Hydraulic Unit, close proximity to the Pacific Ocean Nearshore Zone
27 where groundwater flow directions are toward the Pacific Ocean. Depth to groundwater
28 at the Malibu Bay Club WWTP site is quite shallow and ranges from a depth of 5 feet

1 to 10 feet below ground surface (“bgs”). Groundwater is in hydraulic connection with
2 the Pacific Ocean.

3 20. The RWQCB Basin Plan identifies the following beneficial use designations at
4 this part of the Nearshore Coastal ecosystem: industrial service supply, navigation, water
5 contact and non-water contact recreation, commercial and sport fishing, marine habitat,
6 wildlife habitat, biological habitat preserve, rare and endangered species habitat support,
7 migration of aquatic organisms, spawning and reproduction of aquatic organisms and
8 shell fish harvesting.

9 21. Based upon sampling results, the pollutants being discharged include: nitrite,
10 nitrate, phosphorus, ammonia, disinfection by-products, chlorine and bacteria.

11 22. RIVER WATCH is understandably concerned regarding the effects of both surface
12 and underground sewer system overflows on critical habitat in and around the diverse
13 and sensitive ecosystem of the Malibu Bay Club WWTP and leachfields.

14 23. The location or locations of the various violations are identified herein and in
15 records created and/or maintained by or for the DISCHARGER which relate to its
16 Malibu Bay Club WWTP and associated sewage collection system as further described
17 in this Complaint.

18 **V. STATUTORY AND REGULATORY BACKGROUND**

19 24. CWA § 301(a), 33 U.S.C. § 1311(a) prohibits discharges of pollutants or activities
20 not authorized by, or in violation of, an effluent standard or limitation or an order issued
21 by the EPA or a State with respect to such a standard or limitation including a NPDES
22 permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. Additional sets of regulations
23 are set forth in the Basin Plan, California Toxics Rule, the Code of Federal Regulations,
24 and other regulations promulgated by the EPA and the State Water Resources Control
25 Board. Sewage is specifically identified in the CWA as a pollutant. The sewage
26 collection system sewer lines owned by the DISCHARGER are point sources under the
27 CWA.

1 25. The affected waterways detailed in this Complaint and in the Notice are navigable
2 waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

3 26. The Administrator of the EPA has authorized Regional Water Quality Control
4 Boards to issue NPDES permits, subject to specified conditions and requirements,
5 pursuant to CWA § 402, 33 U.S.C. § 1342.

6 27. The DISCHARGER is in possession of no NPDES Permit authorizing it to
7 discharge pollutants into navigable waters of the United States within the meaning of the
8 CWA.

9 VI. VIOLATIONS

10 28. The DISCHARGER's unpermitted discharges of untreated sewage from its sewage
11 collection system, Malibu Bay Club WWTP and leach lines, as detailed herein and in the
12 Notice are violations of CWA § 301(a), 33 U.S.C. § 1311(a). The violations are
13 established in RWQCB files for the DISCHARGER's sewage collection system as well
14 as in studies conducted by the DISCHARGER in compliance with orders from regulatory
15 agencies.

16 29. The enumerated violations are detailed in the Notice, incorporated herein by
17 reference, and below, designating the section of the CWA violated by the described
18 activity.

19 VII. CLAIM FOR RELIEF

20 **Violation of CWA § 301(a), 33 U.S.C. 1311(a) Pursuant to CWA § 505(a)(1)(A), 33**
21 **U.S.C. 1365(a)(1)(A) - Violation of an effluent standard or limitation under the Act -**
22 **Discharges of a Pollutant From a Point Source to Navigable Waters of the United**
23 **States not in Compliance with the Act**

24 30. RIVER WATCH re-alleges and incorporates by reference the allegations of
25 Paragraphs 1 through 29, including EXHIBIT A, as though fully set forth herein.

26 31. The DISCHARGER has violated and continues to violate the CWA as evidenced
27 by the discharges of pollutants (raw sewage) from a point source (the sewer lines, Malibu
28 Bay Club WWTP and leachfield lines) to waters of the United States in violation of

1 CWA § 301(a), 33 U.S.C. § 1311(a).

2 32. All discharges identified herein are violations of CWA § 301(a), 33 U.S.C.
3 1311(a) in that they are discharges of a pollutant (sewage) from a point source (sewage
4 collection system) to a water of the United States without complying with any other
5 sections of the Act.

6 33. The violations of the DISCHARGER are ongoing and will continue after the filing
7 of this Complaint. RIVER WATCH alleges herein all violations which may have
8 occurred or will occur prior to trial, but for which data may not have been available or
9 submitted or apparent from the face of the reports or data submitted by the
10 DISCHARGER to the RWQCB. Each of the DISCHARGER's violations is a separate
11 violation of the CWA.

12 34. RIVER WATCH avers and believes and on such belief alleges that without the
13 imposition of appropriate civil penalties and the issuance of appropriate equitable relief,
14 the DISCHARGER will continue to violate the CWA as well as State and Federal
15 standards with respect to the enumerated discharges and releases. RIVER WATCH
16 avers and believes and on such belief alleges that the relief requested in this Complaint
17 will redress the injury to RIVER WATCH's members, prevent future injury, and protect
18 the interests of RIVER WATCH's members which are or may be adversely affected by
19 the DISCHARGER's violations of the CWA, as well as other State and Federal
20 standards.

21 **VIII. RELIEF REQUESTED**

22 WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

23 35. Declare the DISCHARGER to have violated and to be in violation of the CWA.

24 36. Issue an injunction ordering the DISCHARGER to immediately operate the
25 Malibu Bay Club WWTP, sewage collection system, and leachlines in compliance
26 with the CWA.

27 37. Issue an injunction ordering MALIBU BAY CLUB to immediately stop
28 discharging until the Malibu Bay Club WWTP becomes compliant with the CWA.

- 1 38. Order the DISCHARGER to improve the “treatment train” to eliminate any
2 exceedances of the current Waste Discharge Requirements for nitrogen including
3 nitrite, nitrate and ammonia; phosphorus and phosphates; disinfection by-products
4 including, but not limited to, chloramines, trihalomethanes, halonitromethanes,
5 haloamides, iodo-acids, and nitrosamines; and bacteria.
- 6 39. Order the DISCHARGER to monitor monthly for disinfection by-products such
7 as chloramines, trihalomethanes, halonitromethanes, haloamides, iodo-acids and
8 ntrosamines.
- 9 40. Order the DISCHARGER to sample surface waters and soils (i.e., sands) for
10 human fecal bacteria downstream of both the post-treatment leachlines as well as
11 the Malibu Bay Club WWTP and associated collection system.
- 12 41. Order the DISCHARGER to pay civil penalties of \$37,500.00 per violation/per
13 day for its violations of the CWA.
- 14 42. Order the DISCHARGER to pay reasonable attorneys’ fees and costs of RIVER
15 WATCH (including expert witness fees), as provided by CWA § 505(d), 33
16 U.S.C. § 1365(d).
- 17 43. For such other and further relief as the court deems just and proper.

18
19 DATED: August 9, 2017

LAW OFFICE OF JACK SILVER

20
21 By: 
22 Jack Silver

23 DATED: August 9, 2017

LAW OFFICE OF DAVID J. WEINSOFF

24 By: 
25 David J. Weinsoff

26 Attorneys for Plaintiff
27 CALIFORNIA RIVER WATCH
28